REMARKS

Claims 1-8, 12-18, 20, 21, 27-39, 42, 44, 46, 48, 50, 52, 54, and 56 are pending in the application. Claims 40, 41, 43, 45, 47, 49, 51, 53, 55, and 57 are withdrawn from consideration as being directed to non-elected inventions. In the Final Office Action of August 21, 2008, the Examiner made the following disposition:

A.) Rejected claims 1-8, 12-18, 20, 21, 27-39, 42, 44, 46, 48, 50, 52, 54, and 56 under 35 U.S.C. §102(e) as being anticipated by *Asatsuma, et al. (US 7,176,499)("Asatsuma '499").*

B.) Rejected claims 1-8, 12-18, 20, 21, 27-39, 42, 44, 46, 48, 50, 52, 54, and 56 under 35 U.S.C. §102(a) as being anticipated by *Asazuma, et al. (JP 2004088134)("Asazuma '134").*

C.) Rejected claims 1-8, 12-18, 20, 21, 27-39, 42, 44, 46, 48, 52, and 56 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of *Ito, et al. (US 20050042787)("Ito").*

Applicants respectfully traverse the rejections and address the Examiner' s disposition below.

A.) Rejection of claims 1-8, 12-18, 20, 21, 27-39, 42, 44, 46, 48, 50, 52, 54, and 56 under 35 U.S.C. §102(e) as being anticipated by *Asatsuma, et al. (US 7,176,499) ("Asatsuma '499"):*

Applicants respectfully disagree with the rejection. Applicant' s already established invention date predates the earliest effective filing date of *Asatsuma '499.*

In the Office Action of August 21, 2008, the Examiner states that the Affidavits filed on 9/14/07 are not sufficient to overcome the applied rejections. This is simply incorrect. The Examiner seems to confuse applicant' s assertion of an earlier invention date with an attempt to prove entitlement to the benefit of a priority date. This error has led the examiner to the wrong conclusion.

In that regard, 35 U.S.C. § 102(e) states:

[A person shall be entitled to a patent unless]

(e) the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States **before the invention by the applicant** for patent or (2) a patent granted on an application for patent by another filed in the United States **before the invention by the applicant for patent**, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language[.]

Accordingly, under 35 U.S.C. 102(e), prior art must have an effective filing date before the **invention by the applicant**.

The previously submitted affidavits clearly and properly establish **an invention date prior to the earliest effective date** of *Asatsuma '499*. The affidavits set forth a conception date and a reduction to practice date for the invention in Japan as evidenced by JP 2004088134. The affidavits were not intended, nor do they attempt, to establish priority to JP 2004088134.

With these affidavits, applicants previously established **an invention date of at least as early as October 12, 2001**. *Asatsuma '499* has an earliest effective U.S. filing date of October 3, 2002, nearly a year later. As Applicants' invention date pre-dates *Asatsuma '499*, *Asatsuma '499* cannot anticipate Applicants' claimed invention under Section 102(e). Therefore, *Asatsuma '499* cannot anticipate claims 1-8, 12-18, 20, 21, 27-39, 42, 44, 46, 48, 50, 52, 54, and 56, because *Asatsuma '499* is not a proper reference under 35 U.S.C. §102.

Applicants respectfully submit the rejection is improper and that it should be withdrawn.

B.) Rejection of claims 1-8, 12-18, 20, 21, 27-39, 42, 44, 46, 48, 50, 52, 54, and 56 under 35 U.S.C. §102(a) as being anticipated by *Asazuma, et al. (JP 2004088134)("Asazuma '134")*:

Applicants respectfully traverse this rejection. The examiner has made the same error with respect Applicant' s earlier invention date.

In that regard, 35 U.S.C. Sec. 102(a) states:

[A person shall be entitled to a patent unless]

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent[.]

Because art under this section must be known or used by other or described in a printed publication before the invention of the application for patent, art dated after the invention date of the application for patent does not qualify as prior art under this section.

Asazuma '134 cannot anticipate claims 1-8, 12-18, 20, 21, 27-39, 42, 44, 46, 48, 50, 52, 54, and 56, because *Asazuma '134* is dated after the invention of the present application. Applicants previously established an invention date of at least as early as October 12, 2001 via the previously submitted affidavits, as discussed above. *Asazuma '134* has a Japanese filing date of December 15, 2003 (and thus knowledge in this country) and a publication date of March 18, 2004. Clearly *Asazuma '134* is dated after the invention date of the present application, and therefore is not properly cited under Section 102(a).

Applicant' s submit that the Examiner has failed to take into consideration Applicants' already-established invention date of at least as early as October 12, 2001, which pre-dates *Asazuma '134's* Japanese filing date of December 15, 2003 and that the rejection is improper. Accordingly, the rejection should be withdrawn.

C.) Rejection of claims 1-8, 12-18, 20, 21, 27-39, 42, 44, 46, 48, 52, and 56 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of *Ito, et al. (US 20050042787)("Ito")*:

Applicants respectfully disagree with the rejection.

As of this amendment, claims 1-12 of *Ito* have been cancelled and are no longer pending. Attached hereto as Exhibit A is a copy of the Notice of Allowance including the Examiner' s Amendment cancelling those claims.

Applicants respectfully submit the rejection is moot and request that it be withdrawn.

CONCLUSION

In view of the foregoing, it is submitted that claims 1-8, 12-18, 20, 21, 27-39, 42, 44, 46, 48, 50, 52, 54, and 56 are patentable. It is therefore submitted that the application is in condition for allowance. Notice to that effect is respectfully requested.

Respectfully submitted,

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